

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 574 of 1997

in

SPECIAL CIVIL APPLICATION No 249 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

H M THAKKER

Versus

SR DIVISIONAL MANAGER

Appearance:

MR BD KARIA for Appellant
MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 05/11/98

ORAL JUDGEMENT

1. Admitted. Mr. A.K. Clerk waives service of notice of admission on behalf of the respondent. With

the consent of both the parties, the appeal is taken up for final hearing.

2. This appeal is filed against summary dismissal of Special Civil Application No.249 of 1997 by the learned Single Judge on April 3, 1997.

3. The appellant was the original petitioner. He filed the above petition for an appropriate writ, direction or order quashing and setting aside a communication dated February 15, 1996 (Annexure-D to the petition) issued by the Senior Divisional Manager, Life Insurance Corporation of India, Ahmedabad-respondent herein and directing him to treat the petitioner as eligible for pension under the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (hereinafter referred to as "the Pension Rules").

4. The case of the appellant was that he joined the service as Development Officer with the respondent Corporation on 5th November, 1971. On 9th September, 1992, he retired from service by submitting a resignation after completion of more than 20 years and after he reached the age of more than 55 years. His case was that when he retired from service, Pension Rules had not come in force. Those rules are of 1995. However, they were made applicable retrospectively with effect from 1st November, 1993. It was also specifically provided in those rules that the scheme introduced in the said rules would be applicable even to those employees who were in service on January 1, 1986 but retired before November 1, 1993. The appellant was obviously covered by the Rules. When the appellant came to know about it, he made an application to the respondent to grant him benefits of the Pension Rules. His case was that, though he had resigned from service, virtually, it was voluntary retirement as there was no distinction between resignation and voluntary retirement. According to him, he could have voluntarily retired even under the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as "the Staff Regulations"). According to the respondent-Corporation, however, as the appellant had not voluntarily retired from service but had submitted his resignation, which was accepted, he was not entitled to the benefit of Pension Rules. In that connection, reliance was placed on Rule 23. The said Rule reads as under :-

"23. Forfeiture of service :- Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the

Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

5. The learned Single Judge, after hearing the parties, was of the opinion that by not granting pensionary benefits, the respondent-corporation had not committed any error of law which required interference. The petition was, therefore, dismissed.

6. We have heard Mr. Karia, learned counsel for the appellant and Mr. Clerk, learned counsel for the respondent.

7. Mr. Karia submitted that in both the cases, there is voluntary cessation from service. Moreover, even under the Staff Regulations, the appellant was eligible to opt for voluntary retirement and there was no distinction between resignation and voluntary retirement so far as the benefits accrued from the Pension Rules of 1995 are concerned. He, therefore, submitted that by taking too technical and pedantic view, the respondent-Corporation deprived the appellant of pensionary benefits. Mr. Karia further submitted that at the most, taking into account the provisions of Staff Regulations, if the appellant was required to issue notice of three months before voluntary retirement, and the appellant had issued notice of one month as he opted for resignation, the appellant may be asked to pay notice pay of two or three months as required under the Staff Regulations. The appellant is prepared to do so. But for non-payment of notice pay, he should not be deprived of benefits of the pension, particularly, when they have been made applicable to employees who retired between 1986 and 1993. He, therefore, submitted that the Letters Patent Appeal deserves to be allowed.

8. Mr. Clerk, on the other hand, submitted that the provisions of the Staff Regulations are of 1960. Even under the Staff Regulations, there is specific provision for voluntary retirement. The appellant was aware of those regulations and he had not submitted an application for voluntary retirement by giving three months' notice in advance but had submitted a resignation. He also submitted that so far as Pension Rules are concerned, they are statutory rules framed by the Central Government in exercise of powers under Section 48 of the Life Insurance Corporation Act, 1956 and it is the duty of the respondent-Corporation to apply them. The case of the appellant is not covered by the Rules and he is not entitled to the benefits. The learned Single Judge has,

therefore, not committed any error of law in dismissing the petition.

9. In the facts and circumstances of the case, in our opinion, it cannot be said that the order passed by the learned Single Judge suffers from any infirmity. It is no doubt true that the appellant could have voluntarily retired from service by issuing a notice under the Staff Regulations of 1960. It may be that the said voluntary retirement could have been granted by the respondent-Corporation. But it cannot be gainsaid there is distinction between voluntary retirement and resignation. The letter of resignation specifically refers to one month's notice while the voluntary retirement speaks of three months' notice under Regulation 19(2A). It, therefore, cannot be said that, by not granting the benefit of Pension Rules of 1995, the respondent-Corporation has committed any error of law.

10. Mr. Karia submitted that Pension Rules are for the benefit of the employees and they must be liberally construed. The respondent-Corporation cannot adopt technical construction. He stated that there may be very few cases of this nature wherein an employee might have resigned during the intervening period of 1986 and 1993 and on that ground, he is held not to be entitled to benefits under Pension Rules. This may be true. But so far as the Court is concerned, it cannot be said that the Corporation has committed an illegality in not granting the benefit or the learned Single Judge has erred in interpreting them. If there are few cases, it would be appropriate, if liberty is granted to the appellant to make an appropriate application/representation to the Central Government as well as to the respondent-Corporation pointing out all the facts and circumstances of the case. If such application/representation is made, within six weeks from today, the Central Government and the Corporation will consider the same sympathetically taking into account all the facts and circumstances and decide it as expeditiously as possible.

11. Lastly it was submitted that the learned Single Judge has erred in awarding costs to the Corporation. The learned Single Judge has observed that the petition was liable to be dismissed and, while dismissing it, by way of advocate's fee towards costs, Rs.2500/- was awarded to the respondent. In the facts and circumstances of the case, in our opinion, the submission is well founded that the learned Single Judge ought not to have awarded costs and, accordingly, to that extent,

the appeal is allowed. The order of costs is set aside.
No costs.

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